

### REMARKS

Claims 1-28 were pending in the present application. Pursuant to Examiner's Restriction Requirement, Applicant elected to prosecute Group I, claims 1-17. Claims 18-28 are canceled herein pending the filing of a divisional application. Claims 1, 4 and 15-17 have been amended, claims 2 and 18-28 have been canceled and claims 29-40 have been added by the present amendment. Accordingly, claims 1, 3-17 and 29-40 are currently pending in the present application.

Examiner rejected claims 1-5, 12 and 17 under 35 U.S.C. § 102(b) as being anticipated by Lin (U.S. Patent No. 5,535,889). Applicant respectfully submits that independent claims 1 and 17 as amended herein are patentable over Lin. Claim 1 includes, for example, a "second opening on a side of said second compartment and proximate a bottom of said container." Claim 17 includes, for example, a "resealable second opening disposed proximate a bottom of said second food compartment and on a side of said second food compartment." In contrast, Lin discloses a cylindrical vessel with an open top, and a food container with an access hole disposed in the base plate of the food container. Lin does not teach or suggest an opening on a side of a compartment and proximate a bottom of the compartment. As taught by the present application, an opening on a side of a compartment enables better control for dispensing a product and spillage control of both product and product debris. *See, e.g.*, specification, page 10, lines 9 to 22. Accordingly, claims 1 and 17 are not anticipated by Lin.

Claims 3-5 and 12 depend directly or indirectly from claim 1. Without conceding that Examiner's assertions are valid with respect to the limitations of the rejected dependent claims, Applicant respectfully submits that claims 3-5 and 12 are patentable over the cited prior art, not only because of their dependency from claim 1 for the reasons discussed above, but also in view of their novel claim features.

Examiner rejected claims 1-3, 5-7 and 17 under 35 U.S.C. § 102(e) as being anticipated by Lowry (U.S. Patent No. 6,092,717). Applicant respectfully submits that independent claims 1 and 17 as amended herein are patentable over Lowry. Claim 1

includes, for example, a "second opening on a side of said second compartment and proximate a bottom of said container." Claim 17 includes, for example, a "resealable second opening disposed proximate a bottom of said second food compartment and on a side of said second food compartment." In contrast, Lowry discloses a tubular container accessible through open ends. Lowry does not teach or suggest an opening on a side of a compartment and proximate a bottom of the compartment. As taught by the present application, an opening on a side of a compartment enables better control for dispensing a product and spillage control of both product and product debris. *See, e.g.*, specification, page 10, lines 9 to 22. Accordingly, claims 1 and 17 are not anticipated by Lowry.

Claims 3 and 5-7 depend directly or indirectly from claim 1. Without conceding that Examiner's assertions are valid with respect to the limitations of the rejected dependent claims, Applicant respectfully submits that claims 3 and 5-7 are patentable over the cited prior art, not only because of their dependency from claim 1 for the reasons discussed above, but also in view of their novel claim features.

Examiner rejected claims 1-3, 5, 8, 11, 13 and 16-17 under 35 U.S.C. § 102(b) as being anticipated by Kopp (U.S. Patent No. 3,144,152). Applicant respectfully submits that independent claims 1, 16 and 17 as amended herein are patentable over Kopp. Claim 1 includes, for example, a "second opening on a side of said second compartment and proximate a bottom of said container." Claim 16 includes, for example, a "second opening at a second region of said second food chamber, said second region on a side of said second food chamber and proximate a bottom of said second food chamber." Claim 17 includes, for example, a "resealable second opening disposed proximate a bottom of said second food compartment and on a side of said second food compartment." In contrast, Kopp discloses a compartmented jar open at both ends. Kopp does not teach or suggest an opening on a side of a compartment and proximate a bottom of the compartment. An opening on a side of a compartment enables better control for dispensing a product and spillage control of both product and product debris. *See, e.g.*, specification, page 10, lines 9 to 22. Accordingly, claims 1, 16 and 17 are not anticipated by Kopp.

Claims 3, 5, 8, 11 and 13 depend directly or indirectly from claim 1. Without conceding that Examiner's assertions are valid with respect to the limitations of the rejected dependent claims, Applicant respectfully submits that claims 3, 5, 8, 11 and 13 are patentable over the cited prior art, not only because of their dependency from claim 1 for the reasons discussed above, but also in view of their novel claim features.

Examiner rejected claims 8-10 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Lin as applied above, in view of Narsutis, et al. (U.S. Patent No. 5,945,145). Applicant respectfully submits that dependent claims 8-10 and independent claim 16 are patentable over Lin in view of Narsutis, et al. in light of the amendments to claims 1 and 16 herein.

To establish a prima facie case of obviousness, three basic criteria must be met. *See* M.P.E.P. § 2143. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. Without conceding the first and second criteria, Applicant respectfully asserts that the references lack all the claim limitations of the amended claims.

With respect to the third criterion, all the claim limitations must be taught or suggested by the prior art. *See* M.P.E.P. § 2143.03. Claims 8-10, which include the limitations of claim 1 as amended, include a container with a "first opening disposed on a top of" and a "second opening on a side of" a container. Claim 16, as amended, includes a canister comprising a first and second food chamber, wherein a first opening is "disposed on a top of said first food chamber" and "opposite said second food chamber," and wherein a second opening is "on a side of said second food chamber and proximate a bottom of said second food chamber." As discussed above, Lin discloses resealable openings on a top of a cylindrical vessel and on a bottom of a cylindrical vessel. Narsutis et al disclose a flap of resealable adhesive tape. However, this combination of Lin and Narsutis et al does not teach or suggest an opening on a top and an opening on a side of a

container or chamber. Accordingly, claims 8-10 and 16 are patentable over Lin in view of Narsutis et al.

Examiner rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Lin as applied above, in view of Wright (U.S. Patent No. 5,630,523). Applicant respectfully submits that dependent claim 14 as amended herein is patentable over Lin in view of Wright in view of the amendment to claim 1.

Applicant again respectfully asserts that the references lack all the claim limitations of the amended claims. Claim 14, which includes the limitations of claim 1 as amended, includes a container with a first opening disposed on a top of a container, and a second opening on a side of a container, wherein the first opening comprises a spout. As discussed above, Lin discloses resealable openings on a top of a cylindrical vessel and on a bottom of a cylindrical vessel. Wright discloses a food container with a spout. However, Lin and Wright, even if combined, do not teach or suggest a container with an opening disposed on a top of the container and an opening on a side of the container. Accordingly, claim 14 is patentable over Lin in view of Wright.


Examiner rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Kopp as applied above, in view of Ness (U.S. Patent No. 5,588,561). Applicant respectfully submits that dependent claim 15 as amended herein is patentable over Kopp in view of Ness in view of the amendment to claim 1.

Applicant again respectfully asserts that the references lack all the claim limitations of the amended claims. Claim 15, which includes the limitations of claim 1 as amended, includes a container having a first compartment with a first opening on a top of the container, and a second compartment with an opening on a side of the container. As discussed above, Kopp discloses a compartmented jar opened at both ends. Ness discloses a container with a flexible compartment. However, Kopp and Ness, even if combined, do not teach or suggest a container having a first compartment with an opening on a top of the container, and a second compartment with an opening on a side of the container. Accordingly, claim 15 is patentable over Kopp in view of Ness.

In light of the amendments and remarks above, Applicant believes the application is now in condition for allowance and respectfully requests that Examiner pass the case to issuance. If the Examiner should have any questions regarding this application, Applicant requests that Examiner contact Applicant's attorney at the number listed below.

Respectfully submitted,

11/10/03  
Date

  
\_\_\_\_\_  
Brian A. Carlson  
Reg. No. 37,793  
Attorney for Applicant

Slater & Matsil, L.L.P.  
17950 Preston Rd., Suite 1000  
Dallas, TX 75252  
Tel: 972-732-1001  
Fax: 972-732-9218